

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANNE SANKS and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA

*Docket No. 99-1273; Submitted on the Record;
Issued February 7, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a cervical degenerative disc condition while in the performance of her duties.

In the months prior to January 18, 1995 appellant, a sheet metal worker, developed numbness and tingling in her right hand while in the performance of her duties. The Office of Workers' Compensation Programs accepted her claim for right carpal tunnel syndrome and approved a surgical release. She received compensation for temporary total disability. Appellant also received a schedule award for a 10 percent permanent impairment of the right upper extremity. On March 11, 1996 she returned to a modified position.

On May 7, 1996 Dr. J.W. Spivey, Jr., an orthopedic surgeon, reported that appellant had received no relief from the numbness in her hand. Appellant related to Dr. Spivey that she had developed a persistent neck pain in December 1995. On examination he noted no tenderness about the cervical spine and no pain radiating from her neck. Appellant had good range of motion, which exacerbated no symptomatology. X-rays showed no bony or joint changes. Dr. Spivey recommended a magnetic resonance imaging (MRI) scan.

On June 24, 1996 an MRI scan of the cervical spine was reported to show the following: (1) degenerative disc changes with a large central and right-sided disc herniation at C4-5 causing considerable pressure on the cervical cord and narrowing it; (2) degenerative disc changes with a good deal of posterior bulging of the disc at the C3-4 and C5-6 levels; and (3) marked muscle spasm with reversal of the cervical lordosis.

On July 30, 1996 appellant received a notice of proposed separation for physical disability.

On August 8, 1996 she filed a Form CA-2, notice of occupational disease and claim for compensation, asserting that the severe and radiating pain in the back of her neck was a result of her federal employment.

The Office supplied Dr. Spivey with a statement of accepted facts and asked him to address whether appellant's current cervical problems were medically connected to her work. In a report dated August 13, 1996, Dr. Spivey replied as follows:

"I have reviewed the statement of accepted facts regarding [appellant's] employment. The only two injuries that I can determine are minor ones which resolved without any major treatment.¹ Likewise, her job description and current clinical findings appear to be unrelated as best I can determine. If I can be of further help, please feel free to call on me."

On August 24, 1996 appellant underwent surgery to fuse several of her cervical discs.

In a decision dated September 19, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between appellant's accepted employment injury and the claimed condition or disability.

Effective September 20, 1996 appellant was separated from employment for physical disability.

On May 9, 1997 Dr. Spivey reported that he had again reviewed the statement of accepted facts previously supplied by the Office. He stated that appellant had a well-documented history of dysfunction of her right upper extremity that was thought to be carpal tunnel in origin but subsequently proved to be cervical in origin. After noting the cervical conditions shown by the MRI scan, Dr. Spivey opined as follows:

"It is my medical opinion that the cervical conditions listed above were a direct result of performing the duties of a sheet metal worker described within the statement of accepted facts. Her cervical condition was permanently aggravated by repetitive exposure and she is fortunate she suffered no paralysis. [Appellant] had no previous trauma report other than her job-related duties which were believed to be related to carpal tunnel in origin, which subsequently proved to be cervical in origin. [Appellant] is still disabled to perform the duties of a sheet metal worker and has permanent residuals caused by her job-related injury."

In a supplemental report dated February 2, 1998, Dr. Spivey related the duties appellant had performed as a sheet metal worker for over five years. He noted that appellant underwent a carpal tunnel release without relief from the pain, tingling or numbness. Dr. Spivey noted that she then underwent a cervical fusion of the C4-5 and C5-6 discs "and did recover from some of the pain." He reiterated that appellant's previous burn and puncture injuries appeared to be

¹ The statement of accepted facts noted that on October 18, 1989 appellant burned the distal phalanx of her left index finger. She was treated with first aid and lost no time from work. On January 19, 1999 she punctured the distal phalanx of her left middle finger. She was again treated with first aid and lost no time from work.

unrelated to her cervical injury and did appear to resolve without major medical issues. Dr. Spivey observed, however, that the statement of accepted facts did not mention the diagnosed carpal tunnel release, which the Office had accepted: “A closer review of these facts identified the numbness in the right hand and constant use of vibrating equipment in the performance of her duties.” He continued:

“It is my medical opinion that the duties she performed from July 1989 through November 1994, as a sheet metal worker, using vibrating air and power tools for extended and repetitive periods in the performance of her job, including those identified earlier in this letter, accelerated the degenerative disc disease and permanently aggravated the cervical condition of C3-4, C4-5 and C5-6, requiring surgical intervention to give relief and prevent possible paralysis. [Appellant] continues to suffer from additional cervical problems related to this occupational injury and will need future medical treatment.

“I hope this clarifies any confusion and medical issue involving this patient.”

In a decision dated March 11, 1998, the Office denied modification of its prior decision.

The Board finds that this case is not in posture for decision. Further, development of the medical evidence is warranted.

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.³

Appellant filed a claim on August 8, 1996 asserting that the severe and radiating pain in the back of her neck was a result of her federal employment. She, therefore, bears the burden of proof to establish that she sustained such an injury. There is no dispute in this case concerning the duties appellant performed as a sheet metal worker. The question for determination is whether the performance of these duties caused or aggravated or accelerated her cervical degenerative disc condition.

Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established

² 5 U.S.C. §§ 8101-8193.

³ See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) (“traumatic injury” and “occupational disease or illness” defined).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

The later medical opinions provided by Dr. Spivey are insufficient to establish a causal relationship between the diagnosed cervical condition and her federal employment. Appellant apparently had no cervical complaints or symptoms until December 1995, more than a year after she first noticed numbness and tingling in the fingers of her right hand. She was examined on a number of occasions in 1995, but the record gives no indication of a cervical complaint or a positive clinical finding in relation to the neck. The first evidence of neck discomfort in the record is Dr. Spivey's report of March 7, 1996, but his findings on examination were essentially negative. An MRI report of June 24, 1996 did reveal degenerative changes in the cervical spine, but when originally asked whether appellant's current cervical problems were medically connected to her work, Dr. Spivey reported that "her job description and current clinical findings appear to be unrelated as best I can determine." Further, Dr. Spivey did not explain how appellant's initial lack of cervical complaints and symptoms was consistent with the acceleration and permanent aggravation he postulated or why appellant's cervical condition did not manifest itself proximally until well after the appearance of her distal complaints.

Nonetheless, Dr. Spivey's later reports are generally supportive of appellant's claim. He reported that the duties she performed from July 1989 through November 1994 as a sheet metal worker, using vibrating air and power tools for extended and repetitive periods, accelerated her degenerative disc disease and permanently aggravated the cervical condition of C3-4, C4-5 and C5-6, requiring surgical intervention to give relief and prevent possible paralysis. Dr. Spivey noted no previous trauma report other than her job-related duties. He also noted that appellant underwent a carpal tunnel release without relief from the pain, tingling or numbness but did recover from some of the pain when she later underwent a cervical fusion of the C4-5 and C5-6 discs. Dr. Spivey's opinion in support of appellant's claim is unrefuted; the record contains no opinion to the contrary.

Although Dr. Spivey's reports are insufficient to establish that appellant sustained a cervical degenerative disc condition while in the performance of her duties, the Board finds that they are sufficiently supportive of her claim that further development of the evidence is warranted.⁸ The Board will set aside the Office's March 11, 1998 decision and remand the case for further development of the medical evidence. After such further development as may be

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384-85 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *See John J. Carlone*, 41 ECAB 345, 358 (1989) (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

necessary, the Office shall issue an appropriate final decision on appellant's August 8, 1996 claim for compensation.

The March 11, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
February 7, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member